

MFS Rule - Chapter 23 Timber Harvesting Standards to Substantially Eliminate Liquidation Harvesting

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**MAINE DEPARTMENT OF CONSERVATION
MAINE FOREST SERVICE**

PROVISIONALLY ADOPTED RULE: 14 APRIL 2004

STRIKEOUT AND REPLACE VERSION

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04 DEPARTMENT OF CONSERVATION

058 BUREAU OF FORESTRY

**Chapter 23: TIMBER HARVESTING STANDARDS TO SUBSTANTIALLY
ELIMINATE LIQUIDATION HARVESTING**

AUTHORITY. 12 MRSA, c. 805, sub-c. 3-A; Public Law 2003, c. 422.

SUMMARY. This rule establishes standards for timber harvesting on lands that are sold or offered for sale within five years of the date of purchase of the parcel. It also specifies circumstances which are exempt from these rules.

SECTION 1. PURPOSE

The purpose of this rule is to substantially eliminate the practice of liquidation harvesting. The Legislature has defined liquidation harvesting as “the purchase of timberland followed by a harvest that removes most or all commercial value in standing timber, without regard for long-term forest management principles, and the subsequent sale or attempted resale of the harvested land within 5 years.”¹

**SECTION 2. AMENDMENTS TO MAINE FOREST SERVICE CHAPTER 20
(FOREST REGENERATION AND CLEARCUTTING STANDARDS)**

Sections 4.DB. and 4.EG. of this rule constitute amendments to Sections 2.A.14, and 2.A.19 of MFS Rule Chapter 20 (Forest Regeneration and Clearcutting Standards) as adopted on April 28, 1999. ~~Section 4.H of this rule adds a new Section 2.A.53-A to the same Chapter 20 Rule.~~

SECTION 3. SCOPE AND APPLICABILITY

A. SCOPE. This rule establishes timber harvesting standards for forest lands in Maine which are purchased or acquired after the effective date of this rule, and harvested and sold or offered for sale or otherwise conveyed within five years of acquisition.

Unless an exemption applies, it is a violation of this rule and of the statute if a landowner conducts timber harvesting on a parcel without complying with this rule and then sells, offers for sale, or otherwise conveys the parcel, or any portion thereof, within five years of its acquisition.

B. APPLICABILITY. Whenever provisions of this rule are less stringent than corresponding provisions of applicable federal, state, or municipal law or regulations, the more stringent provisions apply.

SECTION 4. DEFINITIONS

For the purpose of 12 MRSA, Chapter 805, sub-chapter 3-A and this rule, the following terms are defined as follows. Unless otherwise provided herein, this rule incorporates by reference the definitions contained in MFS Rule Chapter 20 (Forest Regeneration and Clearcutting Standards).*

¹ The term “timberland” has the same meaning as “forest land” as defined in this rule.

A. Adequately Stocked Stand means for even aged stands a forest stand that contains C-line stocking as defined by the stocking guide relevant to particular species published by the USDA Forest Service. For uneven-aged management, “adequately stocked stand” means that the stocking level of acceptable growing stock trees must not be less than 60 square feet of basal area per acre.

A.B. Certified Master Logger means a timber harvester ~~who is~~ certified under the Master Logger Certification Program, a program administered by the Professional Logging Contractors of Maine, a non-profit corporation of Maine, according to standards promulgated by that program dated 01 April 2003, ~~and provided this program continues to provide the protections relevant to this rule in effect at the time of adoption of this rule.~~

C. Certified Resource Manager means a licensed forester whose sustainable forest management of a client’s forest lands is verified by an independent 3rd party audit.

B.D. Forest Land means land primarily covered with trees, and where commercial timber harvesting is not precluded by legal requirement.

C.E. Forest Stand means a contiguous group of trees sufficiently uniform in age class, distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

F. High Grading means timber harvesting that removes the most commercially valuable trees and leaves a residual stand composed primarily of trees of poor quality, poor condition, unable to respond to release from competition, and/or non-commercial species.

D.G. Independent 3rd Party Certification means:

- ~~1.~~A system that verifies that forest management is consistent with a certification program’s standards through an independent 3rd party audit of the management of forest lands.:
 - ~~a. a landowner’s management of the landowner’s forest lands; or,~~
 - ~~b. management of a client’s forest lands by a Certified Resource Manager; or,~~
 - ~~c. a. a group of landowners’ management of the collective landowners’ forest lands (also known as Group Certification).~~
2. To be considered an “independent 3rd party certification” system:
 - a. The certification program, including but not limited to the standards for awarding certification and the protocols for ascertaining compliance must be developed and administered by an entity with no financial interest in the entity seeking certification except by reason of the contract for certification services;
 - b. The organization retained to perform the certification audit must receive no financial benefit from timber harvesting ~~activities~~ on the land or by the entity being audited, except for the contractual relationship for the audit service.

* A copy of the Forest Practices Act rule may be obtained from: Maine Forest Service, 22 State House Station, Augusta, ME 04333-0022, Ph: 207-287-2791, Internet: www.maineforestservice.org.

E.H. Liquidation Harvesting means the purchase or other acquisition of forest land~~timberland~~ followed by a timber harvest that is not in compliance with Section 6 of this rule, removes most or all commercial value in standing timber, without regard for long-term forest management principles, and the subsequent sale, ~~or~~ offer for sale, or other conveyance of the harvested land, or any portion of it, within 5 years.

F.I. Parcel means the contiguous area within one municipality, township, or plantation owned by one person or group of persons in common or joint ownership.

H.J. Rare or exemplary natural community means a plant community rated as S1 or S2 by the Maine Natural Areas Program.²

G.K. Responsible party means all of the following persons or entities, jointly and severally:

1. The landowner, or landowners, who owned the property at the time a timber harvest subject to this rule was conducted;
2. The landowner's designated agent at the time a timber harvest subject to this rule was conducted;
3. The Licensed Forester and/or the employer of the Licensed Forester who:
 - a. Signed the harvest plan for a timber harvest subject to this rule; or
 - b. Supervised a timber harvest subject to this rule; or
 - c. Certified that a timber harvest subject to this rule was conducted in accordance with a timber harvest plan required by this rule.
4. The timber harvester who conducted a timber harvest subject to this rule.

I.L. Threatened, or Endangered Species means plant and animal species listed as threatened or endangered by the U.S. Fish and Wildlife Service, ~~or~~ the Maine Department of Inland Fisheries and Wildlife.

H.M. Timber Harvesting Activities ~~means as defined in 12 MRSA, Chapter 805, sub-chapter 3-A,~~ the cutting or removing of timber for the primary purpose of selling or processing forest products.

K.N. Timber Harvest Plan means a site-specific document signed by a Licensed Forester outlining proposed timber harvesting activities that are consistent with the standards established in this rule.

O. Timberland has the same meaning as "forest land" in this rule.

SECTION 5. EXEMPTIONS

This chapter does not govern timber harvesting on forest lands that meet one or more of the following conditions:

² A current listing may be obtained by contacting the Maine Natural Areas Program, 93 State House Station, Augusta, ME 04333-0093.

- A. Where the land is purchased before or held for at least 5 years following the effective date of these rules. Any land that is exempt from this rule remains exempt, notwithstanding the acquisition of contiguous land subject to this rule;
- B. Where the harvesting is on land that has received independent 3rd-party certification and where an auditor determines that any harvesting on any parcel sold within 5 years of purchase has conformed to the requirements of the certification system; ~~provided that, within 1 year of the effective date of these rules, and not less frequently than every 5 years thereafter, the auditor conducting a certification audit of the landowner submits to the Bureau a certification that the activities covered by this rule on the lands being certified are in compliance with this rule.~~
- C. Where the land is managed and the timber harvest is supervised by a Certified Resource Manager;
- ~~C.D.~~ Which are within a parcel of land containing 1,000 500 acres or less that is harvested by a Certified Master Logger according to a forest management plan prepared by a Licensed Forester, and the Forest Operations Notification is signed by the Certified Master Logger;
- ~~D.E.~~ Where the landowner owns less than 100 acres, including non-forest land, total ownership statewide;
- ~~E.F.~~ Where the landowner has obtained, prior to commencing timber harvesting, the necessary permit or permits from a federal, state, and/or local governmental entity to change the land use from forest land to a nonforest use (i.e., for development or agriculture). The area exempted shall be that area that is actually to be converted. A copy of the permit or permits must be submitted with the Forest Operations Notification. If the land use change is conversion to a subdivision, the exemption for each lot is limited to 5 acres or the lot size specified in the permit granted by the appropriate governmental entity, whichever is smaller;
- ~~F.G.~~ Where the parcel, including non-forest land, is less than 20 acres in size;
- ~~G.H.~~ Where the parcel is conveyed to another party due to inheritance, court order, transfer of deed in lieu of foreclosure, or bona fide gift without any consideration to a person related to the landowner by blood, marriage, or adoption. The exemption for a bona fide gift is conditioned upon the land not being further conveyed by the donee in a non-exempt transaction within 5 years from the date of the gift;
- ~~H.I.~~ Where the parcel is conveyed to a government entity exercising the power of eminent domain, or the transfer is under threat of the exercise of such authority;
- ~~I.J.~~ Where the parcel is conveyed to another party as a result of partitioning lands held in common and undivided ownership, sales of common and undivided interests in such lands, and trading common and undivided interest in lands;
- K. Where the parcel is conveyed for bona fide roads and rights of way;
- ~~L. Timber harvests w~~Where the forest products harvested or processed are for personal use by the landowner.

SECTION 6. HARVEST STANDARDS

Timber harvesting on a parcel of land, any portion of which is sold, offered for resale, or otherwise conveyed within five years of the date of purchase or acquisition of the parcel, and which is not exempted by Section 5 of this rule, must satisfy one of the three following conditions:

A. Option 1. Basal area removal limited.

Timber harvesting must not remove more than 50 ~~40~~ percent of the basal area of trees 4.5" DBH and larger, present on the entire parcel at the time of purchase. Timber harvesting ~~activities must not result in high grading and~~ must include ~~reasonable~~ measures to protect advanced regeneration by minimizing the area damaged by logging equipment.

B. Option 2. Accredited Timber Harvesters and Licensed Foresters

1. Timber harvesting on parcels of 100 acres or less conducted by timber harvesters, and/or supervised by Licensed Foresters, either of whom have successfully completed training in a timber harvest planning, layout, and operations course accredited by the Bureau, and who have signed an attestation agreeing not to participate in liquidation harvesting.
2. Accreditation by the Bureau is contingent upon compliance with state laws and rules governing timber harvesting, including 12 MRSA, Chapter 206-A, 12 MRSA, Chapter 805, and 38 MRSA, Chapter 3, 36 MRSA, Chapter 105, agency rules implementing those chapters, and municipal Shoreland Zoning Ordinances.

Option ~~3~~2. Timber harvest plan developed prior to timber harvest.

1. Prior to a timber harvest subject to this rule, a site specific timber harvest plan must be prepared that contains the following elements:
 - a. Landowner's name, address, and telephone number.
 - b. Designated agent's name, address, and telephone number (if applicable).
 - c. Signature and license number of Licensed Forester preparing or approving the plan.
 - d. Forest Operations Notification number and the date it was filed.
 - e. total parcel acreage;
 - e.f. A stand-specific narrative that includes:
 - i. a description of the pre-harvest stand, including information on approximate stand acreage, stocking, timber volumes, timber quality, potential for increases in future timber volume and value, an assessment of wind firmness and other stand characteristics relevant to the planned harvest;

* Note: Landowners may request assistance from the Maine Forest Service in reviewing their proposed timber harvesting activities to ensure compliance with this rule.

iii.ii. for harvests that will result in an adequately stocked stand, a silvicultural rationale for the harvest in each stand that explains how the harvest will maintain or improve stand productivity, including to the extent practicable, given conditions at the time (for example, logging technologies, types of timber expected to be in demand, and other factors) growing stands to sawtimber sizematurity, improving timber quality, and specifically avoiding high grading, capturing actual and imminent mortalityenhancing the growth of trees to be retained for future growth, and, when regenerating a stand, creating conditions suitable for the prompt regeneration of the site to commercially valuable species, as well as protecting desirable advanced regeneration. This The rationale must ~~also~~ specify actions that will be taken to minimize damage to the residual stand, including without limitation minimizing the area occupied by skid trails and retaining adequate residual stocking to reduce the risk of blowdown. The rationale must include a description of the residual stand that will result from the harvest, including but not limited to species, stocking, tree condition, size classes, and other stand characteristics.

iii. For harvests that will result in an understocked stand, and for regeneration harvests, a silvicultural rationale that explains the reason justifying the harvest, which must include at least one of the reasons identified in Maine Forest Service Rule, Chapter 20, Forest Regeneration and Clearcutting Standards. The rationale for a harvest that will result in an understocked stand must specify actions that will be taken to retain adequate residual stocking to reduce the risk of blowdown, and to minimize damage to the residual stand and advanced regeneration, including without limitation minimizing the area occupied by skid trails, or to create conditions suitable for the prompt regeneration of the site to commercially valuable species. The rationale must include a description of the residual stand that will result from the harvest, including but not limited to species, stocking, tree condition, size classes, and other stand characteristics.

f.g. An assessment of the soil erosion potential of the harvest area; and specification of actions that will be taken to minimize rutting, the potential for soil erosion, and the deposition of sediment into water bodies. These actions should include without limitation planning the layout of skid trails and yards to minimize erosion, and the use of applicable Best Management Practices.

g. A description of how the proposed harvest will protect known occurrences of threatened or endangered species and rare or exemplary natural communities, conserve wildlife habitat and biological diversity, including the results of consultations with the Maine Natural Areas Program and the Department of Inland Fisheries and Wildlife; and based this consultation an explanation of:

i. How the harvest will conform to standards for the protection of significant or essential wildlife habitat, if any occur in or near the harvest area, and whether the appropriate approvals, permits, or variances, if any are required, have been granted.

~~ii. Steps that will be taken to conserve known occurrences of threatened, or endangered species, rare or exemplary natural communities rated as S1 or S2 by the Maine Natural Areas Program;~~

~~iii.i. Other steps planned to conserve wildlife habitat and biological diversity, such as maintaining or promoting the development of snags and cavity trees consistent with logger safety, and protecting sensitive habitats such as vernal pools and deer wintering areas.~~

- h. A description of how the proposed harvest will protect significant wildlife habitat and essential wildlife habitat; and water quality; and wetlands; and riparian zones; if any, including the use of applicable Best Management Practices.
 - i. A stand-specific map prepared at a scale adequate to identify individual stands clearly, but no less than of 1:15,840 (1 in. = 1,320 ft. or 20 chains) or larger. The map ~~must~~should identify wetlands, and water bodies, and any known occurrences of threatened or endangered species, rare or exemplary natural communities, and significant wildlife habitat and essential wildlife habitat, if that may be present, rare or exemplary natural communities, habitats of state and federally-listed threatened, and endangered plants and animals identified on the parcel as required in this section. The map must contain a legend, north arrow, landowner name, town, date of preparation, and the name of the preparer. The landowner must update the map to conform to conditions in the field.
2. The timber harvest plan must be implemented during the harvest.
 3. A Licensed Forester must attest in writing within 60 days of completion of the harvest or expiration of the Forest Operations Notification, whichever is earlier, that the harvest has complied with the timber harvest plan. The attestation must include the Licensed Forester's signature and license number.
 4. The timber harvest plan must be kept on file by the landowner and must be made available to the Bureau for at least seven ~~five~~ years following the completion of the harvest or the expiration of the Forest Operations Notification, whichever is later.

C. Option 43. Unforeseen economic hardship permitting post-harvest certification.

If the landowner demonstrates to the satisfaction of the Bureau, that unforeseen circumstances create an ~~unforeseen~~-economic hardship and necessitate the sale of a parcel, the requirements of this rule do not apply as set forth in a written decision by the Bureau. A landowner will only be allowed to use this option once and only for a single parcel in any five-year period.

SECTION 7. RESPONSIBILITY

All responsible parties may ~~shall~~ be jointly and severally responsible for compliance with this rule, and liable for violations of this rule.

SECTION 8. VARIANCE

A variance to the strict applications of these rules may be granted as specified in MFS Rule Chapter 20 (Forest Regeneration and Clearcutting Standards, Section 6).

SECTION 9. VIOLATIONS

Any responsible party involved in any activity in violation of this rule commits a civil violation, and shall be penalized in accordance with 12 MRSA, Chapter 809, and other applicable law.

SECTION 10. EFFECTIVE DATE

The effective date of this rule is January ~~21~~, 2005.

STATUTORY AUTHORITY: 12 MRSA, Chapter 805, sub-chapter 3-A; Public Laws 2003, Chapter 422.